in fact delayed remuneration for his current work. That is why pensions are regarded as earned income.

But the man does not get back in the end the accumulated sums paid into the fund on his behalf. This is a form of insurance. Like every other kind of insurance what he gets back depends on how things turn out. He may never be off duty and may die before retiring age leaving no dependants. Then he gets nothing back. Or he may by getting a retirement or disablement pension get much more back than has been paid in on his behalf. I can see no relevant difference between this and any other form of insurance. So, if insurance benefits are not deductible in assessing damages and remoteness is out of the way, why should he pension be deductible?"

It is apparent to me that what Lord Reid said in that passage in reference to a pension payable under the Police Pensions Regulations 1962 could indeed be equally said in respect of a pension under the Sarawak Ordinance. I would therefore agree with counsel's contention that the pension of $110.27 should not be taken into consideration.

On that basis and assessing it on the new salary scale but using the judge's method of calculation, I would assess the dependency figure for both the widow and two infants at $50,760 and deducting therefrom the gratuity of $2,760 and the accelerated payment of $2,000, the net amount due would be $46,000 The learned judge took out of this amount $3,000 being a figure which he allowed for loss of expectation of life, but, however, he omitted to make a further order for which the plaintiff also made a claim for payment by the defendant to the deceased's estate. In assessing the loss of dependency, the learned judge utilised the method set out by Lord Denning in the House of Lords case of *Mallet* v. *McMonagle*.[3]

In the circumstances I would substitute for the orders of the learned judge the following: —

General damages $43,000 to be apportioned as follows: —

To the widow	- - -	$28,667.00
To first child	- - -	$ 7,166.50
To second child	- - -	$ 7,166.50
To the estate	- - -	$ 3,000.00

There is also an appeal against the award of $1,000 for funeral expenses. In my view this is a fair amount and should not be disturbed.

On the question of costs Mr. Thomas should have brought to the notice of the court below the case of *Parry* v. *Cleaver*. He had therefore succeeded on a point not raised in the court below. As Cotton L.J. in *Hussey* v. *Horne-Payne*[4] said: —

"As our decision in favour of the defendant turns upon a point not raised by him in the court below, I agree with what the Master of the Rolls has said as to the costs."

And the Master of the Rolls Jessel M.R. disallowed costs of the appeal. Again in this appeal the appellant was only partly successful. That is another good reason for disallowing the costs of this appeal.

As to costs in the court below, the learned judge disallowed the costs because the amount awarded by him was less than the amount deposited by the defendant in court before the commencement of the trial and now that the amount we award exceeds the deposit the plaintiff should have the costs in the court below. Her deposit of $500 will be repaid to her.

Now if I may go back to the award I would order that the damages due to the two children be paid to the Public Trustee to hold the same in trust for the two infants.

Ismail Khan C.J. (Borneo) and **Ali F.J.** concurred.

Order accordingly.

TAN AH SEH v. TAN PEK SUI

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) & Ali F.J.)

August 30, 1972]

[Kuching — Federal Court Criminal Reference No. 2 of 1972]

Landlord and Tenant — Subletting — Particulars of — Request from tenant for particulars of subletting — Whether notice sufficient — Rent Control Ordinance (Sarawak Cap. 86).

The respondent landlord sent a notice to the appellant, his tenant, requiring him to furnish a declaration whether he had sublet the premises in question, and if so particulars in respect of such subletting, and to exhibit a statement thereof in a conspicuous place at the premises. The appellant failed to furnish the required declaration and he was charged for an offence under section 17(2) of the Rent Control Ordinance (Cap. 86), and was convicted and fined.

In this reference the appellant sought for a decision of the Federal Court a question law of public interest, i.e. whether the notice given by the landlord was a valid notice under section 17(1) of the Rent Control Ordinance having regard to the fact that the said notice neither referred to the Rent Control Ordinance nor set out in full the provisions of section 17 of the said Ordinance.

Held: (1) there is no prescribed form in the Rent Control Ordinance and therefore the notice need not follow any particular form;

(2) in the instant case the notice was a perfectly valid notice.

Case referred to:-

(1) *Arunachalam Chettiar* v. *Kow Guan* [1963] M.L.J. 253 at p. 256.

FEDERAL COURT.

T. O. Thomas for the appellant.

Patrick Tan for the respondent.

Ismail Khan C.J. (Borneo): This is a reference to this court under section 66 of the Courts of Judicature Act, 1964 on the application of the appellant reserving for the decision of this court a question of law of public interest; the question being whether the notice given by the landlord (Exhibit P.3) was a valid notice under section 17(1) of the Rent Control Ordinance (Sarawak Cap. 86) having regard to the fact that the said notice neither referred to the Rent Control Ordinance nor set out in full the provisions of section 17 of the said Ordinance.

The section reads —

"17.—(1) The landlord of any premises, or his agent, may by written notice require any tenant thereof —

(a) to furnish to the landlord of the premises a statutory declaration, which shall be prepared and stamped at the cost of such landlord, stating whether the tenant has sublet the

premises or any part thereof to, or has permitted by licence or otherwise their use and occupation by, any person other than a member of the tenant's family, and if so sublet, used or occupied to state in such statutory declaration—

(i) the name of every person, other than a member of the tenant's family, to whom the tenant has sublet the premises or any part thereof, or who has been permitted by the tenant by licence or otherwise to use and occupy such premises; and

(ii) particulars of the amount of rent or other payment paid by every such person, together with a description of the premises, or the part thereof as the case may be, in respect of which such rent or other payment is paid;

(b) to exhibit or cause to be exhibited in a conspicuous place within the entrance to the premises a statement in the English language and in such other language in current use in Sarawak as the landlord may require, showing the particulars mentioned in, and the substance of, the statutory declaration referred to in paragraph (a).

(2) Every tenant upon whom a notice has been served under the provisions of subsection (1) who, without reasonable excuse, fails to comply with the requirements of such notice within fourteen days of the receipt thereof, or exhibits or causes to be exhibited a statement which is false in any material particular, shall be guilty of an offence: Penalty, a fine of five hundred dollars."

The respondent is the registered proprietor of controlled premises, No. 241, Padungan Road, Kuching, whereof the appellant is the tenant.

On the 12th day of September, 1969, the respondent sent a notice to the appellant. The notice is as follows:—

"Our Ref. PT/84/63 12th September, 1969.
Mr. Tan Ah Seh,
241, Padungan Road,
Kuching.
Dear Sir,

Re: *Premises 241, Padungan Road, Kuching.*

We act on behalf of Mr. Tan Pek Sui of Main Bazaar, Kuching, who is the registered proprietor of the aforesaid premises.

We are instructed to and do hereby give you notice and require of you as follows:—

(a) To furnish to our client a Statutory Declaration, which you shall prepare and stamp at the cost of our client, stating whether you have sublet the premises or any part thereof to or have permitted by licence or otherwise the use or occupation by any person, other than a member of your family and if so sublet or occupied to state in such Statutory Declaration:—

(i) The name of every person, other than a member of your family, to whom you have sublet the premises or any part thereof, or who has been permitted by you by licence or otherwise to use and occupy such premises; and

(ii) Particulars of the amount of rent or other payment paid by every such person, together with the description of the premises or the part thereof, as the case may be in respect of which such claim or other payment is paid.

(b) To exhibit or cause to be exhibited any conspicuous place within the entrance to the premises a statement in the English Language and in the Chinese Language showing the particulars mentioned in, and the substance, of the Statutory Declaration referred to in paragraph (a).

Yours faithfully,

(Sgd.) Yong & Co."

The appellant failed to furnish the respondent with the required declaration within the period set out in subsection (2). He was charged with an offence under the subsection.

Before the learned magistrate it was argued that the notice was bad in law as (1) it failed to show that it was a notice from the landlord to a tenant; (2) it omitted all reference to the section of the Rent Control Ordinance under which it was given; and (3) it failed to inform the tenant of his liability to penal consequences if he failed to comply with the notice within fourteen days. The learned magistrate did not accede to these submissions. He convicted the appellant and fined him $100.

On appeal to the High Court the same objections were raised to the validity of the notice. The learned judge upheld the conviction.

Before us the same arguments were raised which, in our view, did not carry the case much further. It was said that greater precision was required of the notice because of the consequences under subsection (2) following non-compliance. It was suggested that the notice should have been on the lines of the form prescribed under the regulations pursuant to the English Landlord and Tenant Act 1954. The use of such a form would no doubt do away with the appellant's objections to the notice from the landlord. The answer to this is that under the English Act, the notice has to be in the prescribed form. There is no prescribed form in our Ordinance nor is there any in the Control of Rent Ordinance, Malaya. As Thomson, C.J. (as he then was) said in the case of *Arunachalam Chettiar* v. *Kow Guan*[1] at page 256—

"....the Ordinance, unlike the English Rent Acts, does not provide in terms for the giving of a notice which, moreover, under the English Acts must be in a specified form."

The notice therefore need not follow any particular form.

The respondent was only asking for a declaration from the appellant whether he had sublet the premises, and if so particulars in respect of such subletting, and a statement thereof in a conspicuous place at the premises. That was to enable him to ascertain if there was any overcharging of the subtenants. It is not necessary to use the actual words of the section in the notice as was done in the instant case. It would be sufficient if it sets out clearly what is required of the tenant under subsection (1). The relationship of the landlord and tenant is implicit in the language of the notice. A landlord is under no requirement to warn the tenant of the penalty for not complying with the notice. If he fails to comply with it, he does so at his peril.

In the instant case the notice is a perfectly valid notice. The answer to the question posed in the reference is in the affirmative.

Azmi L.P. and **Ali F.J.** concurred.

Answer in the affirmative.